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SUPREME COURT, U.S.

No. 98-581

In The

Supreme Court of the United States

October Term, 1998

EDWARD D. SOTH, JR.,

Petitioner,

v.

BALTIMORE SUNPAPERS, INCORPORATED, THE BALTIMORE SUN COMPANY, DIANA M. MURPHY, JACK ROSS, JOHN KIDWELL, JAMES BORN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the United States District Court for the District of Maryland properly held that Section 301(a) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), preempts a state law claim of tortious interference with contract.

PARTIES TO THE PROCEEDING

Petitioner accurately identifies the parties to the proceeding, except that there is no corporate entity known as Baltimore Sunpapers, Incorporated.

The Baltimore Sun Company, a Maryland corporation, is a wholly owned subsidiary of The Times Mirror Company.

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The opinion of the Fourth Circuit Court of Appeals (Pet. App. A-1 to A-11) is unreported and its citation is *Soth v. Baltimore Sunpapers, Inc., et al.*, 145 F.3d 1325, 1998 WL 225149 (4th Cir. 1998). The decision of the United States District Court for the District of Maryland (Pet. App. A-12 to A-24) is reported as *Soth v. The Baltimore Sun Co., et al.*, 4 F. Supp. 2d 417 (D. Md. 1996).

STATUTORY PROVISION INVOLVED

The only statute relevant to the Petition for Writ of Certiorari is Section 301(a) of the LMRA, 29 U.S.C. § 185(a), reproduced *infra* at App. 1a.

STATEMENT OF THE CASE

Although the facts of this case should not prove particularly important to the determination of whether to grant the Petition for Writ of Certiorari, the misleading and contrived version of events set forth in the Petition must be corrected.[1]

Soth's Petition arises from his attempts over the past nine years to harass his former employer, The Baltimore Sun Company ("The Sun") and four of its managers, after

[1] The facts in the text of this Brief in Opposition are described by the Fourth Circuit and the District Court in their respective opinions below. (Pet. App. A-1 to A-9; A-13 to A-15.)

an impartial arbitrator found that there was just cause to discharge him. Soth was an automotive advertising sales representative at The Sun. (Pet. App. at A-13.) Soth's employment was governed by a Collective Bargaining Agreement ("CBA") between the Washington-Baltimore Newspaper Guild ("the Union") and The Sun. Article VIII of the CBA provided that an employee may not be discharged except for just and sufficient cause. (*Id.* at A-4 to A-5.) Article XX, section 20.1 of the CBA, governing conflicts of interest and the right to engage in outside activities, provided:

> Employees shall be free to engage in any activities outside their working hours which do not constitute service for any interest or publication in competition with [The Sun]. No employee, without permission of [The Sun], shall use in the course of such activities any material or featured title of [The Sun] or exploit in any way the employee's connection with [The Sun].

(*Id.* at A-5.)

On July 30, 1990, the Sun learned that Soth was engaging in outside advertising in direct competition with The Sun and in violation of the conflict of interest section of the CBA. (*Id.*) Four days later, Soth was discharged for his operation of an outside advertising agency that was a direct conflict of interest with his employment at The Sun. (*Id.* at A-5 to A-7, A-14 to A-15.) Soth challenged his discharge through the grievance and binding arbitration provisions of the CBA. Following two days of hearing, in which fourteen witnesses testified, an impartial arbitrator held there was "just and sufficient cause" for Soth's discharge. (*Id.* at A-7.)

Upon receiving the arbitration decision, Soth embarked on an admittedly vindictive course of conduct. First, he filed an unfair labor practice charge against The Sun with the National Labor Relations Board ("NLRB"), claiming that he was fired in retaliation for his union activities. The NLRB dismissed his charge. (*Id.* at A-7 to A-8.) Soth then filed charges with the Equal Employment Opportunity Commission ("EEOC") and the American Arbitration Association ("AAA"). Both charges were dismissed. (*Id.* at A-8.) Soth then filed a lawsuit in the United States District Court of Maryland against The Sun, the Union, the AAA, and the arbitrator himself, alleging a breach of the CBA, breach of the duty of fair representation, and denial of a fair hearing because of an alleged conspiracy between the Union and The Sun. The District Court dismissed that Complaint. (*Id.*)

Soth then filed two complaints in state court against Respondents. Both complaints raised four claims: (1) abusive discharge; (2) violation of the Maryland Antitrust Act; (3) tortious interference with contract; and (4) civil conspiracy. One of Soth's complaints added a fifth count under 42 U.S.C. § 1981.[2] In these actions, Soth alleged for the first time that he was discharged in retaliation for opposing what he believed was a possible antitrust violation by The Sun. (*Id.* at A-8 to A-9.)

Respondents removed both cases to the United States District Court for the District of Maryland. Respondents

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[2] Soth conceded that his Section 1981 claim was not viable in light of this Court's decision in *Rivers v. Roadway Express, Inc.*, 511 U.S. 298 (1994). The District Court granted Soth's request to withdraw the Section 1981 claim. (Pet. App. at A-16.)

then filed a Motion for Summary Judgment, which Soth opposed. Soth also filed a Motion to Remand the complaints to state court. (*Id.* at A-16.)

The District Court determined that Soth's tortious interference with contract claim was preempted by Section 301 of the LMRA and exercised supplemental jurisdiction over the remaining state law claims. (*Id.* at A-18 to A-19.) The District Court granted Defendants' Motion for Summary Judgment on all of Soth's claims and denied Soth's motion to remand.[3] (*Id.* at A-20 to A-23.)

Soth appealed the District Court's decision to the Fourth Circuit Court of Appeals, which affirmed the District Court's decision for the reasons that court set forth. (*Id.* at A-11.) Soth's Petition to this Court follows.

REASONS FOR DENYING THE PETITION

A. None Of The Compelling Reasons That Warrant Granting A Writ Of Certiorari Are Present.

Soth seeks to invoke this Court's discretionary review under 28 U.S.C. § 1254(1). Because this Court is not obligated to hear Soth's case, he must explain why his

[3] Soth moved to alter or amend the judgment, claiming that (i) his tortious interference claim did not require an interpretation of the CBA, and (ii) the District Court should have certified questions regarding abusive discharge to the Court of Appeals of Maryland. He did not challenge the entry of summary judgment on the antitrust claim or the civil conspiracy claim. The District Court denied the Motion to Alter or Amend the Judgment.

case deserves consideration. The question presented in Soth's petition, however, does not fall within the categories that justify this Court's discretionary review. Rather, this case involves the straightforward application of Section 301(a) of the LMRA.

Soth argues that the lower courts erred in holding that review of the CBA was essential to assessing his claim of tortious interference with his employment at The Sun. (Pet. at 14). Soth's employment with The Sun, of course, was governed by the terms of the CBA. In requesting certiorari, Soth asks the Court to step in and stop Section 301(a) preemption of Maryland law. Both the United States District Court for the District of Maryland and the Fourth Circuit, however, concluded that Section 301(a) preemption is proper regarding Soth's claim of tortious interference with contract.

As set forth below, the Fourth Circuit's decision in this case is consistent with its own prior decisions, is consistent with decisions of other federal jurisdictions, and does not involve an unsettled question of law. Further, the decisions below are consistent with this Court's rulings on Section 301(a) preemption. There is nothing compelling, conflicting, unsettled, or unusual about either of the decisions below to warrant this Court's review. Soth's petition should be denied.

B. Section 301 Of The LMRA Preempts A State Law Claim If Its Resolution Requires Interpretation Of A CBA.

Section 301(a) of the LMRA provides that claims for the breach of a collective bargaining agreement are interpreted under federal law.[4] Section 301 not only provides the federal courts jurisdiction over controversies involving collective bargaining agreements, but also " 'authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements.' " *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 403 (1988) (citation omitted). In *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), this Court explained that "the subject matter of § 301 is peculiarly one that calls for uniform law." *Id.* at 103.

Section 301's preemptive effect is necessary "to ensure uniform interpretation of collective bargaining agreements, and thus to promote the peaceable, consistent resolution of labor-management disputes." *Lingle*, 486 U.S. at 404. "If the policies that animate § 301 are to be given their proper range . . . the pre-emptive effect of § 301 must extend beyond suits alleging contract violations." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210 (1985). Section 301(a) extends beyond contract claims to

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[4] Section 301(a) provides that: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185(a), reprinted *infra* at App. 1a.

preempt tort claims that are "inextricably intertwined with consideration of the terms of the labor contract." *Id.* at 213.

The test for Section 301 preemption is well-settled: A state law claim is preempted by Section 301 if its resolution requires the interpretation of a collective bargaining agreement. *Lingle*, 486 U.S. at 413. In *McCormick v. AT&T Technologies, Inc.*, 934 F.2d 531 (4th Cir. 1991) (en banc), *cert. denied*, 502 U.S. 1048 (1992), the Fourth Circuit, applying *Lingle*, determined that state tort claims are preempted "where reference to a collective bargaining agreement is necessary to determine whether a 'duty of care' exists or to define 'the nature and scope of that duty.' " *Id.* at 536 (citation omitted).

The separate elements of the state law cause of action are examined by the court to determine whether resolution of any element requires interpretation of a collective bargaining agreement. *Id.* at 531. Section 301 preemption of state tort claims is fundamental. "Any other result [than preemption] would elevate form over substance and allow parties to evade the requirements of § 301 by relabeling their contract claims as claims for tortious breach of contract." *Lueck*, 471 U.S. at 211.

C. Resolution Of Soth's State Law Claim Of Tortious Interference With Contract Requires Interpretation Of The CBA.

Soth argues that the District Court erred in concluding that interpretation of the CBA was essential to his claim of tortious interference with contract. (Pet. at 14-15). Soth maintains that Maryland law does not

require the existence of a contract as a necessary element of a tortious interference claim, and even if a contract does exist, recovery for tortious interference does not require a showing that the contract was breached. (*Id.* at 15-16). Soth attempts to avoid preemption by arguing that he has only alleged tortious interference with his "economic and employment relations" and not the CBA. (*Id.* at 24). These arguments do not affect the resolution of Soth's case.

The contract governing Soth's employment relationship at The Sun was the CBA. That contract defined the manner in which Soth's employment could be terminated. That contract defined the scope of outside activities in which an employee was permitted to engage while working for The Sun. As a result, the substance of Soth's claims can only relate to his dispute over whether there was "just cause" for his discharge for engaging in illegal "outside activities" as defined by Sections 8.3 and 20.1 of the CBA. Soth's claim for tortious interference was related directly to, and inextricably intertwined with, the CBA.

The Fourth Circuit's decision below is consistent with all federal appellate courts that have addressed whether tortious interference with contract claims are preempted by Section 301(a) of the LMRA. *E.g., Magerer v. John Sexton & Co.*, 912 F.2d 525, 530-31 (1st Cir. 1990); *International Union v. Covenant Coal Corp.*, 977 F.2d 895, 899 (4th Cir. 1992); *Fox v. Parker Hannifin Corp.*, 914 F.2d 795, 800 (6th Cir. 1990); *Beard v. Carrollton R.R.*, 893 F.2d 117, 122 (7th Cir. 1989); *Johnson v. Anheuser Busch, Inc.*, 876 F.2d 620, 624 (8th Cir. 1989); *Scott v. Machinists Automotive Traders*, 827 F.2d 589, 591-92 (9th Cir. 1987). *See also Baylis v. Marriott Corp.*, 906 F.2d 874 (2d Cir. 1990) (Railway

Labor Act preempts state law claim of tortious interference with contract); *Carpraro v. United Parcel Serv. Co.*, 993 F.2d 328 (3d Cir. 1993) (same).

Moreover, even if this Court were to assume that Soth's tortious interference claim does not directly involve the CBA, federal case law confirms Soth's claim still is preempted, and that the decisions below were proper. Preemption is required when "resolution of [the plaintiff's] claim will not involve the direct interpretation of a precise term of the CBA, but . . . will require a court to address relationships that have been created through the collective bargaining process and to mediate a dispute founded upon rights created by a CBA." *DeCoe v. General Motors Corp.*, 32 F.3d 212, 218 (6th Cir. 1994). Therefore, "even if the state law claim presented . . . is not directly dependent on analysis of the terms of the [CBA], it is at least indirectly dependent on such analysis and is preempted by federal law." *International Brotherhood of Electrical Workers, Local 613 v. Fowler Indus., Inc.*, 691 F. Supp. 1431, 1438 (N.D. Ga. 1988), *rev'd on other grounds*, 884 F.2d 551 (11th Cir. 1989).

Uniform reasoning by lower federal courts establishes that the tortious interference claim, which Soth maintains is not dependent upon the CBA, nevertheless is preempted by Section 301(a). *E.g., Peterson v. Air Line Pilots Ass'n*, 759 F.2d 1161, 1170-71 (4th Cir.), *cert. denied*, 474 U.S. 946 (1985) (intentional interference with contractual relationship preempted); *Carter v. Smith Food King*, 765 F.2d 916, 921 (9th Cir. 1985) (wrongful interference with a business relationship preempted); *San Antonio Community Hosp. v. Southern Calif. Dist. Council*, 125 F.3d 1230, 1234-35 (9th Cir. 1997) (intentional interference with

prospective economic advantage and interference with contractual rights preempted); *Turner v. American Federation of Teachers*, 138 F.3d 878, 884 (11th Cir. 1998) (tortious interference with employment claim preempted); *Sullivan v. Conway*, 959 F. Supp. 877, 882 (N.D. Ill. 1997), *aff'd*, 157 F.3d 1092 (7th Cir. 1998) (intentional interference with employment relationship claim preempted); *Morris v. Ambassador Nursing Home, Inc.*, 845 F. Supp. 1164, 1167 (E.D. Mich. 1994) (intentional interference with employment relationship claim preempted).

CONCLUSION

The courts below properly held that Section 301(a) of the LMRA preempts Soth's claim for tortious interference with contract. The Question for Review is not important to anyone but Soth. Respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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APPENDIX A

STATUTORY PROVISION

Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), provides as follows:

§ 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.